

Martin, Parsons, Rainey, Scarborough, Townes and Whaley—11.

NAYS.—Messrs. Gentry, Grimes, Guinn, Harman, Hart, Pitts, Potter, Raines, Sims, Stockdale, Throckmorton, Walker and Wallace—13.

The question on Mr. Throckmorton's motion was then put and carried.

ORDERS OF THE DAY.

A bill to repeal the usury laws. On motion of Mr. Potter was laid on the table.

Mr. Gentry moved to adjourn until Monday the 27th inst., 10 o'clock, A. M. Lost.

A bill concerning party walls and division walls, fences and ditches in common and otherwise.

On motion of Mr. Rainey, was made the special order for Tuesday the 3rd day of January, 1860.

Joint Resolution relative to the Harper's Ferry insurrection. Read 3rd time and passed.

Mr. Townes, from the committee on Enrolled Bills, reported a bill amendatory of and supplemental to an act to incorporate the Sabine and Galveston Bay Railroad and Lumber Company, correctly enrolled, duly signed and this day presented to the Governor for approval.

A bill to amend the 34 section of an act to regulate proceedings in the District Courts passed May 12th, 1860.

On motion of Mr. Rainey, was made the special order for Wednesday, 4th January, 1860

On motion of Mr. Parsons the Senate adjourned until Tuesday next at 11 o'clock, A. M.

TUESDAY, December 27, 1859.

Senate met pursuant to adjournment. Prayer by the Chaplain—roll called and there being no quorum, on motion of Mr. Hyde the Senate adjourned until to-morrow morning at 10 o'clock.

WEDNESDAY, December 28th, 1859.

Senate met. Prayer by the Chaplain—roll called—quorum present.

The journal of Friday was read and adopted.

Mr. Dickinson presented the petition of Johnathan Anderson. Referred to the committee on the Judiciary.

Mr. Lott presented the petition of the citizens of Van Zandt county. Referred to the committee on Finance.

Mr. Potter presented the petition of Lient. M. Hitchcock. Referred to the committee on Claims and Accounts.

Mr. Stockdale presented the petition of E. D. Holland. Referred to the committee on Private Land Claims.

Mr. Fall, chairman of the committee on Engrossed Bills, reported a bill supplemental to an act entitled an act to encourage the construction of Railroads in Texas by donations of land, approved January 30th, 1854, approved February 16th, 1858, correctly engrossed.

Mr. Throckmorton introduced the following bills :

A bill for the relief of Greenbury Gates.

A bill for the relief of the heirs of Jacob Black: severally read 1st and 2nd times and referred to the committee on the Court of Claims.

A bill for the relief of E. G. Spencer and A. L. Cartwell, read 1st and 2nd times and referred to the committee on Private Land Claims.

A bill supplementary to an act to ascertain what certificates have been illegally issued by the County courts of counties in Peter's colony. Read 1st and 2nd times and referred to the committee on the Judiciary.

Mr. Lott introduced the following bills .

A bill to incorporate the McKenzie Male and Female College. Read 1st and 2nd times and referred to the committee on Education.

A bill to prevent the sale of vinous, spiritous or other intoxicating liquors, within one mile of the town of Starrville in Smith county. Read 1st time, rule suspended, read 2nd time and ordered to be engrossed.

On motion of Mr. Lott, rule further suspended, bill read 3rd time and passed.

Mr. Grimes introduced a joint resolution authorizing the Governor to appoint three competent persons to examine the State Penitentiary. Read 1st and 2nd times and referred to the committee on the Penitentiary.

Mr. Walker introduced a bill for the relief of certain colonists or their assignees, of Peter's colony. Read 1st and 2nd times and referred to the committee on Public Lands.

Mr. Potter introduced a bill providing for the next election of Representatives to the Congress of the United States from the

State of Texas. Read 1st and 2nd times and referred to the committee on the Judiciary.

Mr. Parsons offered the following resolution :

Resolved, That 500 copies of the report of the State Geologist now in the hands of the committee on Printing in the House of Representatives be ordered to be printed for the use of the Senate. Adopted.

Mr. Stockdale offered the following resolution :

Resolved, That the committee on the Judiciary be requested to consider the propriety of so amending the law in regard to the taking of depositions in civil cases, as to allow the parties or their attorneys to be present at the examination of the witnesses and examine them in open court, instead of filing interrogatories as now required. Adopted.

A message was received from the House of Representatives, informing the Senate, that the House had passed the following bills :

A bill to change the time of holding the district courts in the sixth judicial district.

A bill for the relief of Jose Maria Gonzales.

A bill for the relief of J. P. C. Kennymore.

A bill for the relief of William Phelps.

A bill for the relief of H. C. Lagenly.

A bill for the relief of the heirs of E. Humphreys.

A bill to incorporate the Jefferson Insurance Company.

A bill to incorporate the Houston, Trinity and Tyler Railroad Company.

A bill to fix the time for holding the District courts of the seventh judicial district.

A bill amendatory of and supplemental to an act entitled an act to incorporate the City of New Braunfels, passed 11th May, 1846.

A bill supplementary to an act to regulate Railroad Companies, approved February 7th, 1853, approved December 19th, 1857.

Also the following bills originating in the Senate:

A bill supplementary to and amendatory of an act entitled an act to provide relief for pre-emption settlers and their assignees, under the act of 22nd January, 1845, the act of 7th February, 1853, and the act of 13th February, 1854, and actual settlers in the Mississippi and Pacific Railroad Reservation.

A bill amendatory and supplemental to an act entitled an act to incorporate the Sabine, Galveston Bay, Railroad and Lumber Company.

A bill for the protection of the frontier.

A bill to create the 20th Judicial District, and to define the time of holding courts therein.

A bill to authorize the Governor to postpone the sale of University lands, that have been forfeited for nonpayment of the annual instalments required by law.

A bill for the relief of Wiley Burns, the heirs of Robert M. McKinney, the heirs of Carmel Ramon and the heirs of David Barlow with an amendment ; and that the House had concurred in the Senate's amendment to a bill to incorporate the Hebrew Congregation of the city of Houston ; and had passed a substitute for the Senate's bill to validate certain surveys in Fisher's, Miller's and Peter's colonies.

On motion of Mr. Parsons, a bill to change the time of holding the district courts in the sixth judicial district was taken up and read 1st time, rule suspended, read 2nd time and passed to a 3rd reading ; rule further suspended, read 3rd time and passed.

ORDERS OF THE DAY.

The report of the committee on Claims and Accounts, on a bill appropriating ten thousand dollars or so much thereof, as may be necessary to defray the expenses incurred by Capt. Tobin's command, with the bill for a like purpose from the House, was on motion of Mr. Throckmorton, laid on the table.

The report of the committee on Internal Improvements, on a bill relieving railroad companies of this State, from the necessity of completing, equipping and putting in running order a section of 25 miles of road each and every year, was on motion of Mr. Guinn, laid on the table.

The following bills were severally read 3rd time and passed:

A bill to amend the 8th section of the act of February, 1840, entitled an act concerning conveyances.

A bill concerning vendors liens on real estate.

A bill for the relief of Andreas Manchaca.

A bill making an appropriation to pay Assessors and Collectors for taking the scholastic census for the year 1859.

A bill for the relief of Benjamin Baccus. Ordered to be engrossed, rule suspended, read 3rd time and passed.

A bill for the relief of the heirs of William Hertz. Ordered to be engrossed.

A bill for the relief of Mary Elam. Passed to a 3rd reading.

The report of the Judiciary committee on a bill for the benefit of Jose Sanchez, a minor ; and a bill for the benefit of the heirs of Tomas Sanchez, deceased, recommending their rejection was read and adopted.

The report of the Judiciary committee on the petition of W.

E. Price, recommending its rejection, was read and adopted.

The report of committee on Private Land Claims, on the petitions of Bracken & Heath, of J. D. Mathews and Charley Clark recommending their reference to the committee on the Court of Claims, was read and adopted.

A bill to incorporate the Galveston Firemen's Relief Fund Association. Ordered to be engrossed.

The Senate refused to concur in the amendment of the House to a bill for the relief of Wiley Burns, the heirs of Robert M. McKinney, the heirs of Carmel Ramon and the heirs of David Barlow, and appointed Messrs. Throckmorton and Guinn a committee of conference, and ask a like committee on the part of the House.

The report of the Judiciary committee on a bill for the relief of the Administrator and heirs of Isaac G. Parker, deceased, offering a substitute. Substitute adopted and ordered to be engrossed; rule suspended, read 3rd time and passed.

The report of the committee on Internal Improvements, on a bill to incorporate the Columbus Tap Railway Company, offering amendments. Read, amendments adopted and bill ordered to be engrossed.

On motion of Mr. Herbert, the rule was suspended, bill read 3rd time and passed by the following vote:

YEAS—Messrs. Chambers, Dickinson, Duggan, Fall, Grimes, Guinn, Hart, Herbert, Hyde, Lott, Martin, Parsons, Pitts, Potter, Rains, Scarborough, Sims, Stockdale, Throckmorton, Walker, Wallace and Whaley—22.

NAYS—none.

A bill authorizing and requiring the county courts of the several counties of this State, to lay off their respective counties into commissioners districts, and to provide for the election of county commissioners therein. Read 3rd time and rejected by the following vote:

YEAS—Messrs. Duggan, Fall, Martin, Parsons, Walker, Wallace and Whaley—7.

NAYS—Messrs. Chambers, Dickinson, Grimes, Guinn, Harman, Hart, Herbert, Hyde, Lott, Pitts, Potter, Rains, Scarborough, Sims, Stockdale and Throckmorton—16.

The report of the committee on Private Land Claims, on the petitions of W. B. Green, James English, Horatio V. Philpot, J. B. Gordon, John Myers, John Laramore, Joseph Massey, and John Murchison, recommending their rejection; also on the petition of Joshua Davis, recommending that it lie on the table, was read and adopted.

The report of the committee on the Judiciary, on a bill validating the acts of agents done within the scope of their authority, or within the limits of their agency after the death of the principal and before notice of such death has reached said agent, was read.

On motion of Mr. Wallace, the report was laid on the table.

Mr. Wallace then made the following minority report :

The undersigned a minority of the Judiciary committee, are constrained to dissent from the report of the majority of said committee (on a bill to validate the acts and contracts of agents done after death of the principals and before notice of such death has reached said agents) recommending its rejection. The law proposed to be amended is no part of our statute law, but has been incorporated into our system by adoption. It is a part of the ancient common law of England which lies at the foundation of our jurisprudence. Although this law has undergone many alterations of form and structure to fit it to a new world and people, it still retains many of its primitive features. Whole branches of that law have been handed down to us untouched by the hand of legislation. The law regulating the conduct of agents and determining their rights, duties and liabilities, is a part of that inheritance. We have received it from our ancestors, and have adopted it as a whole, without looking into the minute details of the system. Its general provisions are dictated by an enlightened wisdom and are admirably calculated to meet the wants of a commercial people, and to guard the rights of both principal and agent. But while the operation of these general rules is in the main equitable and just, there are particular cases of hardship and wrong which require legislative intervention. It is a rule of the common law, that all agencies are terminated by the death of the principal. This rule in its general application is wise and just for the party who is entitled under the law to the property of the deceased should be entitled to control it and there is no hardship in holding that an agent who has notice of his principals death, shall no longer bind his estate by his acts. But where the principal during his lifetime instructed the agent to do certain acts or make certain contracts, and the agent after the death of the principal and in ignorance of such death proceeds to execute the trust reposed in him, every principle of justice requires that those who inherit the fortune or profit by the bounty of the deceased, should save harmless the diligent agent and the ignorant public who have been imposed upon by a show of authority which the law pronounces null, but the invalidity of which they have no present means of ascertaining. And yet the law is

otherwise, the ignorant agent and the credulous public are the sufferers. The want of notice protects neither the one or the other. The heirs of the deceased principal affirm the acts and contracts of the agent, if in their opinion they are beneficial, but if advances are made by the agent, or if losses are sustained by him in carrying out the trust, or if the contract results injuriously to the estate, the whole transaction is repudiated no matter how closely the agent has followed his instructions and no matter how great the sacrifice made by him in executing the agency. But this is not the rule where the principal continues alive and revokes the authority conferred on his agent. Then the acts of the agent are valid and binding upon the principal no matter how injurious they may be until notice of such revocation reaches the agent. The law even goes farther; for the agent who has notice that his authority has been revoked may still bind his principal by his acts, provided he be a general agent and the person dealing with him has no notice that the authority has been revoked. This rule is established to prevent fraud and imposition upon the public. The principal having entrusted the agent with external indicia of authority, and having held him out publicly as authorized to transact business for him, the withdrawal of authority is required by law to be as public and notorious as the act conferring it, and notice should be brought immediately home to the party dealing with the agent, and to the agent himself before his acts cease to bind the principal. The latter has no reason to complain for he has placed it in the power of the agent to do the act, by having recognised former acts of a similar character as binding upon him or by having left in his possession the written evidence of his agency. It is true, that in such case the agent who has received notice of the revocation of his authority and attempts to bind his principal by making contracts in his name after such notice will be personally liable to the principal for all damages sustained by him from such unlawful exercise of authority, but the person who deals with the agent in matters relating to the business of the agency, and in ignorance of the revocation of his authority will be fully protected, and contracts thus made will be enforced against the principal. The whole object of the bill under consideration is to make the law uniform and to place revocations by death of the principal on the same footing as revocations by the act of the party in his lifetime, that is to say, that such revocation should not be operative until the agent had received notice of the death. The change proposed is not great, its advantages are evident and no serious danger can be apprehended from the alteration. Its only effect will be to protect

the innocent and ignorant against an act of providence which they could not foresee, prevent or know the only hardship which it imposes upon those who inherit the estate of the deceased principal, is that they shall not avail themselves of his death to rip up a transaction, which if he had lived would have been binding upon him. The only duty which it imposes on them is to respect his will as indicated to his agent and to carry out his contracts in good faith. Surely it is not hard for those who live by the bounty of the deceased to abide by his contracts also. In the case supposed, the agent has acted honestly, he has been guilty of no laches, he has strictly and literally carried out his instructions. His every promptitude in discharging his duty is made by law the cause of his ruin, and yet by the same law any delay in the execution of the business of the agency is equally dangerous to the agent and may subject him to heavy damages, for he is bound to use due diligence in the affairs of the principal entrusted to his management. He is thus placed between two fires, he is required in the same breath to do and not to do the same thing. It is utterly impossible for a man living in Texas to know at the very moment the time of the death of his principal then in New York and England, and yet as the law now stands the agent is required at his peril to know the precise time of his death. A. living in this State, makes B. his agent to transact business here and embarks at the port of Galveston, direct for England. The day after his departure he dies, no information of this fact can reach the agent until the vessel arrives in England and the news is brought back. One month or more may have elapsed. In the meantime the agent ignorant of the death of the principal and acting in good faith under the authority conferred upon him, sells lands, purchases goods, receives, remits and pays out moneys on account of his principal and incurs heavy expenses and makes large outlays in carrying out the objects of the agency, every act thus done is invalid. The agent loses his commissions and the advances he has made on behalf of his principal. Nor is this all, he becomes liable to the heirs of the deceased principal and also to those who have dealt with him on the faith of his agency. Payments made to him under such circumstances of moneys due the deceased principal, will not discharge the debtor from liability but the debt may still be collected by the administrator of the deceased, lands sold by him under like circumstances will still belong to the estate, although the agent may have received payment. These hardships are sufficient in the opinion of the undersigned, to justify and require an alteration in the existing laws. Surely a law which interrupts commerce and destroys con-

fidence, which makes the agent shoulder the acts of his principal and become responsible for the losses arising therefrom, which punishes industry and legalizes frauds, which visits losses arising from death, not upon the estate of the deceased, but upon those who have acted for its advantage, which ensnares the public by requiring it to know what in many instances cannot be known should not be permitted to remain upon our statute book longer. In this belief the undersigned recommend the adoption of the following substitute:

H. C. WALLACE.

One of the committee.

Mr. Wallace then offered a substitute which was adopted.

The question then being on the engrossment of the bill, was lost by the following vote:

YEAS—Messrs. Guinn, Lott, Scarborough, Sims, Walker and Wallace—6.

NAYS—Messrs. Chambers, Dickinson, Duggan, Fall, Grimes, Harman, Herbert, Hyde, Martin, Parsons, Pitts, Potter, Rains, Stockdale, Throckmorton and Whaley—16.

On motion of Mr. Guinn, Mr. Potter was added to the committee on Claims and Accounts.

A bill for the relief of the heirs of E. Humphreys. Read 1st and 2nd times and referred to the committee on Private Land Claims.

A bill to incorporate the Houston, Trinity and Tyler Railroad Company. Read 1st and 2nd times and referred to the committee on Internal Improvements.

A bill for the relief of Jose Maria Gonzales. Read 1st and 2nd times and referred to the committee on Private Land Claims.

The following bills were severally read 1st and 2nd times and referred to the committee on Private Land Claims:

A bill for the relief of William Phelps.

A bill for the relief of J. C. P. Kennymore.

A bill for the relief of H. C. Lazenby. Read 1st and 2nd times and referred to the committee on Claims and Accounts.

The following bills were severally read 1st and 2nd times and referred to the committee on the Judiciary:

A bill amendatory of and supplemental to an act to incorporate the city of New Braunfels, passed 10th May, 1846.

A bill to fix the time for holding the district courts of the seventh Judicial district

A bill to incorporate the Jefferson Insurance Company.

A bill amendatory of an act entitled an act to regulate proceedings in case of forcible entry and detainer, approved 15th March, 1848.

A bill supplementary and amendatory of an act to regulate Railroad Companies, approved February 7th, 1853 approved December 19th, 1857. Read 1st and 2nd times and referred to the committee on Internal Improvements.

A bill to validate certain surveys, and confirming certain patents in the Mississippi and Pacific Railroad Reserve. Read 1st and 2nd times and referred to the committee on Public Lands.

A bill to incorporate the Sabine and Neches River Insurance Company.

On motion of Mr. Pitts, the bill was laid on the table.

Mr. Stockdale offered the following resolution :

Resolved, That a select committee of five be appointed to consider the subject of providing the ways and means to pay and subsist the Rangers called into the service of the State for the protection of the frontier, and report the result of the deliberations to the Senate, which was adopted and Messrs. Stockdale, Grimes, Throckmorton, Herbert and Pitts were appointed the committee.

On motion of Mr. Sims, the Senate adjourned until to-morrow, 10 o'clock A. M.

THURSDAY, December 29th, 1859.

Senate met pursuant to adjournment. Prayer by the Chaplain—roll called—quorum present.

The journal of yesterday was read and adopted.

Mr. Duggan presented the petition of Elijah V. Dale. Referred to the committee on Private Land Claims.

Mr. Grimes, chairman of the committee on Finance, to whom was referred a bill to authorize the county court of Collin county to levy a special tax for the erection of a court house therein, reported the same back to the Senate and recommend the passage of the bill.

Mr. Duggan from the committee on the Judiciary, to whom was referred the memorial of the county court of Comal county, reported the accompanying bill, and recommend its passage.

A bill to authorize the county court of Comal county to levy a special tax to liquidate the indebtedness of said county, contracted in erecting the court house of said county. Read 1st time.

Mr. Potter, chairman of the committee on the Judiciary made the following reports.

The Judiciary committee have considered a House bill making